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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,595	01/23/2002	Jim Sowerwine	1370.01	6408

21901 7590 10/29/2002

SMITH & HOPEN PA  
15950 BAY VISTA DRIVE  
SUITE 220  
CLEARWATER, FL 33760

EXAMINER

HUNTER, ALVIN A

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 10/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

**Office Action Summary**

Application No.

09/683,595

Applicant(s)

SOWERWINE, JIM

Examiner

Alvin A. Hunter

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 January 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the L-shaped joint as claimed in claims 6 and 13 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 6-8 and 13 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. There is no disclosure of an "L-Joint" to support the enablement of claims 6 and 13.

3. Claims 6-8 and 13 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time

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the application was filed, had possession of the claimed invention. There is no disclosure of an "L-joint" to support the enablement of claims 6 and 13.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 7 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "the juncture of the support member" in line 3.

There is insufficient antecedent basis for this limitation in the claim.

Claim 13 recites the limitation "the juncture of the support member" in line 15.

There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Macri (USPN 3554555) in view of Pearson (USPN 5899816), Marier, Jr. (USPN 5375833) and OFFICIAL NOTICE.

Macri discloses a golf training device in which aids a golfer in perfecting his/her swing (See Background of Invention). The device comprises a trapezoidal arm (14), or what the applicant calls an elevated path guidance means; a spring clip, or what the

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applicant calls a support means for the elevated path guidance means; an a magnet, equivalent to what the applicant calls a cradle interface. It is noted in Column 3, lines 1 through 15, that the shape of the arms may vary. In Marier, Jr. note that the path guidance means (12) is cylindrical and in Pearson the path guidance means (24) is rectangular. Therefore, in view of Marier, Jr. and Pearson, one having ordinary skill in the art would consider the shape of the elevated guidance means to a mere obvious design choice and therefore it would have been obvious to make it any shape such as cylindrical being that Macri performs the same function which is to provide an area for which the golf club head is to be swung within. One having ordinary skill in the art would also see that having a cradle interface engaged by mechanical fitting or a hook-loop fastener would be nothing more that equivalent means for allowing easy disengagement of the elevated path guidance means as demonstrated by Macri using magnets, and therefore, would have been obvious. Macri also discloses that a resilient impact absorbing foam be used to construct the arms to absorb the impact of the club and that the device accommodates both right and left hand users (See Column 2, lines 3 and 4 and lines 61 through 75). Macri does not disclose having an elevated path guidance means constructed of low-density polyethylene foam.

OFFICIAL NOTICE is taken that it is known with the art to utilize low-density polyethylene due to its toughness and flexibility. Therefore, one would have found it obvious to employ low-density polyethylene foam, as taught by the OFFICIAL NOTICE, in the invention of Macri for the purpose of toughness and flexibility.

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6. Claims 6-8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Macri (USPN 3554555) in view of OFFICIAL NOTICE and further in view of May et al. (USPN 5707300). <sup>py m</sup>  
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Macri in view of the OFFICIAL NOTICE does not disclose the support means having a horizontal extension elevating the cradle interface, a vertical extension, and a L-joint connecting the horizontal and vertical extension; a base comprising member in a V-shaped configuration with weight on the distal ends. May et al. discloses a golf swing training device in which elbow joints are used to hold vertical and horizontal rods secured such that the horizontal rods may be free to move (See Column 5, lines 15 through 28). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use L-joints to hold a vertical and horizontal extension together, as taught by May et al., in order to secure the two extension in such a way that one of the extension may be adjusted.

OFFICIAL NOTICE is taken that a V-shaped base configuration is common within art for supporting structures. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a V-shaped base configuration having a juncture being that it is common within the art for supporting structures. OFFICIAL NOTICE is also taken that is common within the art to place weight on the end of elements to stabilize and further support structures. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place weights on the distal ends of the base in order to stabilize the device while in use and to further support the device.

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7. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Macri (USPN 3554555) in view of OFFICIAL NOTICE and further in view of Lambert (USPN 3886700).

Macri in view of OFFICIAL NOTICE does not disclose having an assembly guide cord to assisting in assembling and disassembling the device. Lambert discloses a collapsible structure comprising a plurality of elongated element attached together by a flexible strand in order to facilitate easy assembly and collapsibility (See Entire Document). One having ordinary skill in the art at the time the invention was made would have found it obvious to connect a plurality of members with a guide cord, as taught by Lambert, in order to allow easy assembly and collapsibility.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin A. Hunter whose telephone number is 703-306-5693. The examiner can normally be reached on Monday through Friday from 7:30AM to 4:00PM Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell, can be reached on (703) 308-2126. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7768.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

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Group 3700